

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA,

v.

JENNIFER TEMPLIN KINABREW,

Defendant.

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CASE NUMBER 6:18-CR-00066-JRG-KNM

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On July 29, 2019, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Jennifer Templin Kinabrew. The government was represented by Jim Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk, Federal Public Defender.

Defendant originally pled guilty to the offense of Fraud in Connection with Access Devices, a Class C felony. The United States Sentencing Guideline range for this offense, based on a total offense level of 16 and a criminal history category of V, was 41 to 51 months. On May 17, 2013, District Judge John McBryde of the Northern District of Texas sentenced Defendant to six years imprisonment followed by three years supervised release, subject to the standard conditions of release, plus special conditions to include restitution, financial disclosure, and testing and treatment for drug and alcohol abuse. On November 18, 2016, Defendant completed the term of imprisonment and began her term of supervised release. On December 19, 2018, the Eastern District of Texas accepted jurisdiction for the supervision of Defendant.

Under the terms of supervised release, Defendant was required to refrain from excessive use of alcohol and required not to purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a

physician. In its petition, the government alleges that Defendant violated her conditions of supervised release when she submitted urine specimens on October 25, November 13, and November 27, 2018 that tested positive for methamphetamine and submitted a urine specimen on December 6, 2018, which initially tested positive for methamphetamine, but was confirmed by the drug testing lab to not be consistent with human urine. The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession for the offense.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release when she possessed methamphetamine on October 25, November 13, and November 27, 2018, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon finding of a Grade B violation, the Court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of V, the Guideline imprisonment range for a Grade B violation is 18 to 24 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in Allegation 2 of the government's petition. In exchange, the government agreed to recommend a sentence of 18 months imprisonment, with no supervised release to follow.

The Court therefore **RECOMMENDS** that Defendant Jennifer Templin Kinabrew's plea of true be accepted and she be sentenced to 18 months imprisonment, with no supervised release to follow. This sentence shall run concurrently with the 180-day sentence assessed in Cause No. CR19-0015-173 in Henderson County, Texas and Defendant shall be given credit for time in custody since January 15, 2019. The Court further **RECOMMENDS** that Defendant serve her sentence at FCC Carswell in Fort Worth, Texas, if available. The Court further

RECOMMENDS that Defendant be afforded the opportunity to participate in substance abuse treatment and counseling while incarcerated, if available. The parties waived their right to objections so this matter shall be immediately presented to the District Judge for consideration.

So ORDERED and SIGNED this 30th day of July, 2019.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE